IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO. 7 OF 2005

D. D. Samudra, Judge,)
Court of Small Causes,)
Mumbai. ... ...).. .. Applicant.

Versus

1) Vaziralli Pvt. Ltd.)
2) Vishwesh V. Desai.).. .. Respondents.

Ms. P. H. Kantharia, AGP for State.

Ms. Baig with Mr. S.I.Memon for
Respondent Nos.1 and 2.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 4TH APRIL, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

This is a reference made by the Small Causes Judge, Mumbai, (Shri D. D. Samudra) for alleged contempt of the Court. The reference is upshot of an application moved by original Plaintiff to initiate

contempt proceedings against Defendants/Respondents. Acceding to the request made by the Plaintiff, the learned Small Causes Judge has made the reference to this Court under Section 15 of the Contempt of Courts Act, 1971.

2. It is not necessary to elaborately set out the facts and circumstances under which the reference has been made. Suffice it to say that the Plaintiff moved Interim Notice No. 4601 of 1999 in their suit before the Small Causes Court. Thereupon, direction was issued to the Defendants to furnish certain particulars as prayed for in the Notice. The Plaintiff took out another Interim Notice No. 2771 of 2001 alleging that the Defendants failed to comply with the directions issued earlier. The trial Court gave further directions to furnish particulars to the Plaintiff within a period of seven days and adjourned the suit to 14th January, 2003. The Plaintiff complained that the directions were not complied with and as such yet another Interim Notice No. 2421 of 2003 was moved to which the Respondents/Defendants filed their affidavit in reply. In the course of hearing of the Notice No.2421 of 2003, Advocate for the Respondents informed the then Presiding Officer (Shri M. V. Deshmukh) that he had written a letter

to the Honourable the Chief Justice of Bombay High Court and the Honourable Chief Judge of the Small Causes Court, Mumbai on 19th August, 2003. It is this letter (Exhibit "A") which is said to be contemptuous since it tantamounts to interference with the judicial work and as such the Plaintiff filed an application to initiate proceedings for contempt committed by the Defendants / Respondents.

3. A show cause notice was issued to the Defendants to which a reply was filed by them. The learned Small Causes Judge heard the learned Counsel for the parties and came to the conclusion that the letter dated 19th August, 2003 (Exhibit "A") prima facie amounts to contempt of the Court. Consequently, he made the instant reference.

4. We have considered rival submissions of Learned Assistant Public Prosecutor Mrs. Kantharia and learned Counsel for the Respondents. We have carefully gone through the report of learned Small Causes Judge and the contents of the letter dated 19th August 2003 (Exhibit "A") which is said to have propelled the instant reference.

5. Before we consider merits of the matter, it is

essential to point out that the alleged letter dated 19th August, 2003 (Exhibit "A") was not presented before the Small Causes Judge (Shri D. D. Samudra) who has made the present reference. The Notice sent by the Plaintiff dated 4th September, 2003 would show that on 20th August, 2003, in the course of reply argument on behalf of the Defendants, their advocate handed over a copy of the letter in question to the Presiding Officer (Shri M. V. Deshmukh) and the learned Judge immediately returned the same to the advocate after reading it. It is also manifestly clear that Smt. Samdani, advocate for the Plaintiff, protested that at least a copy of the said letter should be provided to her for perusal. It appears that subsequently the copy was given to her as per demand. Needless to say, there was no publication of the letter in question and it was shown to the concerned Small Causes Judge (Shri M. V. Deshmukh) only during the course of the argument and that was returned immediately.

6. We cannot overlook that from time to time the Apex Court has cautioned the Courts to use contempt power very sparingly, with utmost care and caution and only for larger interest. Contempt power is to be used for upholding the majesty of law and dignity of the Court.

In **Chhotu Ram v/s Urvashi Gulati and another,** (2001 7 SCC 530, the Supreme Court observed:

> "The introduction of the Contempt of Courts Act, 1971 in the statute book has been for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law courts by reason where for the exercise of jurisdiction must be with due care and caution and for larger interest."

7. It would be also useful to refer observations of the Supreme Court in the case of **Mrityunjoy Das v/s Saved Hasibur Rahaman,** AIR 2001 SC 1293. The Supreme Court has set out essence of the underlying philosophy of the law of Contempt as follows:

> "Before however, proceeding with the matter any further, be it noted that exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct. The Court must otherwise come to a conclusion that the conduct complained

of tantamounts to obstruction of justice which if allowed, would even permeate in our society vide *Murray and Co. vs. Ashok Kr. Newatia, (2000) 2 SCC 367 = 2000 AIR SCW 389 = AIR 2000 SC 933 = 2000 Cri.L.J. 1394),* this is a special jurisdiction conferred on to the law Courts to punish an offender for his contemptuous conduct or obstruction to the majesty of law. It is in this context that the observations of this Court in Murray's case (supra) in which one of us (Banerjee,J.) was party needs to be noticed.

"The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even can remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and

> the law Courts thus, would forfeit the trust and confidence of the people in general."

8. We shall now advert to the letter dated 19th August, 2003 (Exhibit "A") which was shown to the then Small Causes Judge (Shri M. V. Deshmukh) on 20th August, 2003 during the course of hearing of the interim notice. The letter addressed to the Honourable the Chief Justice of the Bombay High Court and the Honourable Chief Judge, Small Causes Court, Mumbai, only deals with practice and procedure of the Small Causes Court regarding form of Vakalatnama, maintenance of Roznama, procedure for filing applications under Order VII rule 14 of the Code of Civil Procedure and verification of affidavits. A single sentence in the letter which is alleged to amount to contempt of the Small Causes Court is thus:

> "However, if any order passed by C. R. No.10 regarding the practice and procedure, it may result in confusion."

9. It appears that the learned Advocate for the Respondents sought appointment of the Honourable the Chief Justice so as to bring certain defective procedure to the notice of His Lordship. The entire

text of the letter, looked from any angle, does not show any kind of act wielded out to treat or attempt to influence the judicial officer. Secondly, the then Small Causes Judge (Shri M. V. Deshmukh) never thought it fit to take action for so called contempt and never thought it as interference in the course of the judicial proceedings. We find it difficult to appreciate that a single sentence of said letter can be regarded as purported interference in the due course of justice. Even assuming for the sake of argument that sentence of such letter is a kind of attempt to influence mind of the judicial officer to deal with the interim notice in a particular manner, yet it cannot be ignored that the letter was not published and it was shown to the judicial officer only during the course of hearing and was returned to the advocate immediately. Nor the concerned Small Causes Judge took it as interference in his judicial work. Moreover, the letter itself does not show "*material interference*" intended to be caused in the course of justice.

10. The Small Cause Judge (Shri D. D. Samudra), who has made the present reference, was not having first hand knowledge of what transpired during the course of the hearing of the interim notice on 20th August,

2003. It appears that the learned Small Causes Judge simply accepted version of the Plaintiff / Applicant and made the reference as requested for. We disapprove such course adopted by the learned Small Causes Judge (Shri D. D. Samudra). We may hasten to add that judicial officers should not allow themselves to be swayed away by such kind of request and to make reference for action under the Contempt of Courts Act, at the instance of a party, without making proper enquiry and without giving appropriate finding in this context.

11. The learned Small Causes Judge should have followed rules framed by the Bombay High Court under the Contempt of Courts Act, 1971. Rule 6(b) of The Contempt of Courts (Bombay High Court) Rules, 1975 mandate that before making reference the subordinate Court must hold a preliminary enquiry by issuing show cause notice accompanied by copies of the relevant documents, if any, to the contemner. And after due hearing the subordinate Court is further required to write a concise order of reference indicating *why* contempt appears to have been committed.

12. The order under reference reveals that "*why*" part is absent therefrom. Learned Small Causes Judge has

only vaguely referred to the contents of the letter and has observed:

> "Considering the contents of letter I find that there is a prima facie case to accept that the said letter prejudices or interferes or tends to interfere with due course of judicial proceedings namely the hearing of the notice pending before the court."
>
> "After going through the letter dated 19th August, 2003 (Exhibit "A"), notice itself is sufficient to prove that it tends to interfere with administration of justice. Thus, prima facie, that contempt appears to have been committed by Defendants / Respondents."

As a matter of fact, these observations are vague and do not spell out which part of the letter tends to interfere with the judicial proceedings or that whether the act of sending letter itself is treated as interference in the course of judicial proceedings. The order prepared by the learned Small Causes Judge (Shri D. D. Samudra) does not reveal reasons for his conclusion that the letter itself is sufficient to prove that it tends to interfere with the

administration of justice. How we wish, the learned Small Causes Judge should have written a well reasoned order and instead of preparing the order in form it should have been with better substance.

13. There is no separate enquiry made by the learned Small Causes Judge since in his opinion the letter per se was enough proof of the alleged contempt. Unless proper enquiry is made and material placed before the Court considered, it cannot be said that Rule 6(b) of The Contempt of Courts (Bombay High Court) Rules, 1975 is duly complied with. Rule 14 requires the Court making reference to forward a paper book, in quadruplicate, consisting of documents specified in Rules 5 to 7. It appears that the learned Small Causes Judge has not adhered to Rule 14 in the letter and spirit. The learned Small Causes Judge appears to have only quoted some authorities and passed the order under reference. Even the points for determination are also not properly framed. He raised only one vague and holdall point as mentioned below :

> "Whether it is just and proper to make reference to the Honourable High Court of Judicature at Bombay as required under Section 15 of Contempt of Courts Act, 1971 ?"

14. We deem it proper to make it clear that our judicial officers should not resort to action under the Contempt of Courts Act too frequently and, in any case, too lightly. If, at all, any action is warranted then the judicial officers should better ensure that it is properly taken, due enquiry is made and the required procedure is followed so that the action can be maintained. Otherwise it unnecessarily causes loss of valuable time of the Courts. Besides, such haphazardous and improper action may cause damage to the dignity of the Courts instead of maintaining it.

15. On perusal of the letter (Exh. "A"), it may be gathered that the communication was intended to bring certain irregularities to the notice of the Honourable the Chief Justice of the Bombay High Court and the Chief Judge of the Small Causes Court. There was no complaint made against the presiding officer. There was no whisper of any malafide and only apprehension expressed was that if proper procedure is not followed then there was likelihood of "confusion". So, appointment of the Honourable the Chief Justice was sought under the letter (Exhibit "A") to ventilate the procedural irregularities noticed by the learned

advocate for the Defendants / Respondents.

16. By no stretch of imagination it can be said that the letter in question did not, even remotely, attempt to interfere with the judicial proceedings pending before the Small Causes Court. It was argued by the learned AGP Ms. Kantharia that the Defendants / Respondents failed to comply with the directions of the Court and attempted to protract the compliance i.e. giving of particulars and sent the communication in question to influence mind of the judicial officer. If the compliance was not made by the Defendants / Respondents, the Small Causes Judge was free to strike out the defence or to take any other action permissible under the law. He could have proceeded without written statement under Order VIII rule 5 of the Code of Civil Procedure or would have imposed costs as per his discretion. There was no question of being influenced due to any such communication. Nor the concerned Small Causes Judge (Shri M. V. Deshmukh) ever recorded that he was thereby influenced or that the said letter caused interference in his judicial work. The learned Assistant Public Prosecutor sought to rely upon certain observations in the case of **Administrator General of West Bengal vs. Basudeb Mukherjee and In the matter of (1) Barindra**

Kumar Ghose and (2) Sambhunath Mukherji, AIR 1959 Calcutta 174. In the given case, it is held that the person who addresses a letter to the Chief Justice, requesting him to intercede with the trial judge to delay the judgment so as to give time to the defendant, who is in distressed circumstances, to manage to settle up the claim, and causes it to be delivered to the Chief Justice, is guilty of a contempt of the High Court. In the present case the advocate for the Defendants / Respondents did not request the Honourable the Chief Justice to *intercede* with the Small Causes Judge. In the said case it was a suo moto notice issued for contempt of the High Court. In the present case, we are dealing with the reference made by the subordinate court and as such the required rules ought to have been followed before making of the reference.

17. We may usefully refer to a case dealt with by the Division Bench of Karnataka High Court in **Registrar General, High Court of Karnataka v/s Advocate N. Vasudevan,** 1998 Cri.L.J. 2291. A senior practicing Advocate had written a letter to the Chief Justice of the High Court which was not considered as contempt of the Court. Similarly, in case of **A. N. Jindal v/s P. L. Chhabra,** AIR 1969 Delhi 291, it is observed

that letter to superior Court asking it to see and verify as to real situation in cases pending before the lower Court, on facts, did not warrant contempt proceedings. We may make it clear that mere technical contempt, even if it is noticed, may not warrant such a reference to this Court. The trivialities are required to be overlooked in view of Section 13 of the Contempt of Courts Act. The expression "technical contempt" is a convenient expression which is some times used to describe conduct which is not serious enough to warrant attention.

18. To conclude, we may state that the letter in question cannot be regarded as interference in the course of judicial proceedings pending before the Small Causes Court nor it caused any prejudice to the said Court. The learned Small Causes Judge should not have taken cognizance of the technical contempt, if at all, the letter in question gave some impression of oblique intention of the Respondents. The appropriate procedure is also not followed while making the reference. Consequently, we are inclined to hold that the reference is without substance and will have to be dropped.

19. Before parting with this matter, we may take note

of the fact that such references are being made by the subordinate Courts without adopting proper procedure and without substantial reason to take cognizance of the alleged contempt. As stated before, the contempt power is required to be invoked only when the interference / obstruction in judicial proceedings is writ large from the conduct / act of the contemner. In order to avoid future recurrence of such references, we may deem it proper to direct circulation of this judgment to all the District Courts, City Civil Court at Bombay, Small Causes Courts and other Courts over which power of superintendence is exercised by this Court under Article 227. The Registry is directed to take appropriate steps for circulation of the copies of this judgment to the said Courts.

20. We, therefore, discharge the notice and relieve the Respondents from the charge of alleged contempt. The contempt proceedings are accordingly dropped.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)